In the High Court of Uttaranchal, at Nainital.

A.O. No. 246 of 2003

Sitab Singh S/o Malkhan
R/o Village Tikaula Kalan,
Tehsil Roorkee, District Haridwar .....Appellant.

Vs.

1- Sarvan Singh (owner of Truck No. WB-25/5229) S/o Thakur Singh, R/o 16-B Gopal Mukharjee Road, Calcutta-2.

2- Balwant @ Balwan (Driver of the Truck) S/o Puran Singh R/o Siryali District Amritsar (Punjab).

3- The National Insurance Company Ltd. Through its Managing Director, having its Registered Office at 3, Middleton Street, Calcutta.

4- The National Insurance Company Ltd. Through its Divisional Manager, Division XVII, 2 Fairlie Place, 3rd Floor, Calcutta .. Respondents.

Sri Pankaj Miglani, learned counsel for the appellant.
Sri Prabhat Pande, learned counsel for the Insurance Company

Hon'ble B.C. Kandpal, J.

This appeal has been preferred against the judgment and award dated 5-8-2003, passed by the M.A.C.T./Additional District Judge, Roorkee, in MACP No. 85/2000, Sitab Singh Vs. Sarvan Singh and others.

2- Brief facts of the case are that on 1-7-1999 the claimant Sitab Singh was working his duty with the contractor at Toll Barrier sear Chandi Ghaat. Pramod Kumar, Rajveer and others were also there along with him. Suddenly at 3.30 A.M. Truck No. W.B.-

25/5229 came there from the Kangadi side in a rash and negligent manner and climbed upon the claimant, due to which he sustained grievous injuries. The injured was admitted at Government Hospital, Haridwar. The report of the accident was lodged by Pramod Kumar at P.S. Haridwar. The trucks driver fled away from the spot leaving the offending truck there. According to the claimant one of his legs was amputated due to the injuries sustained by him in the accident. He was declared permanently disabled upto the extent of 60%. He expended about Rs. 50,500/- on his treatment. Therefore, he filed the claim petition for compensation to the tune of Rs. 5,50,500/-.

3- The National Insurance Company contested the claim petition by filing the W.S. and denied the insurance of the offending truck with it. The Insurance Company also alleged that the offending truck was not having valid registration and fitness certificate.

4- The owner and the driver of the offending truck did not file the W.S.

5- On the basis of the pleading of the parties, the Tribunal framed the following issues in the claim petition:-

1- Whether on 1-7-1999 at 3-30 A.M., the O.P. No.2, driver of the truck No. W.B. 25-5229, drove the truck rashly and negligent and climbed it upon the claimant near Toll Barrier situate at Chandi Ghaat, Haridwar, due to which the claimant sustained grievous injuries and became permanently disabled?

2- Whether the claimant is entitled to get compensation from the opposite parties, due to the injuries sustained by him?.

3- Whether at the time of the accident, the truck owner had no valid and effective registration and fitness certificate and its driver was not having valid driving licence? If so, its effect?.

4- To what amount of compensation, the claimant is entitled to get?.

6- The claimant filed copies of F.I.R., driving licence registration and insurance cover note. He also filed disability certificate and various papers in respect of his medical treatment. He also examined himself as P.W.1 and Pramod Kumar as P.W.2 The O.Ps. did not adduce any oral evidence in support of their case.

7- The Tribunal after having heard the learned counsel for the parties and considering the entire evidence on record, decreed the petition and awarded an amount of Rs. 1,58,000/- along with interest @ 9% per annum from the date of presentation of claim petition till the date of final payment in favour of the claimant/appellant. The Tribunal vide impugned judgment and award directed the owner of the offending vehicle in question to pay the amount of compensation.

8- The claimant/appellant has challenged the impugned judgment and award on the ground that the claim Tribunal has committed an error by fixing the liability to pay the amount of compensation against the owner of the offending truck. It has been contended that the vehicle in question was insured with the National Insurance Company at the time of the accident. The claimant had filed the photo copy of the

papers pertaining to the insurance of the offending vehicle, but the tribunal has ignored those papers and has fixed the liability against the owner of the vehicle instead of the Insurance Company.

9- Heard learned counsel for the parties and perused the record.

10- The record of the court below shows that the claimant has filed the photo copies of the cover note and receipt of premium paid pertaining to the insurance of the offending vehicle in question. Those papers are 7-C, 8-C and 9-C respectively. It is true that the documents filed by the claimant with regard to the insurance of the vehicle are photocopies, but that ground alone cannot be taken to discard the evidentiary value of the papers filed by the claimant/appellant before the court below. The insurance company has shirked its liability by making a plea to the extent that the vehicle in question was not insured with the insurance company at the time of the accident, but the insurance company has not adduced any cogent and reliable evidence in order to rebut the documents filed by the claimant/appellant pertaining to the insurance of the offending vehicle in question. It is not the case of the insurance company that the papers filed by the claimant/appellant are either forged or fabricated. Therefore, in view of these facts and circumstances of the case the insurance company cannot avoid its responsibility to pay the amount of compensation to the claimant.

11- The finding of the tribunal concerned that the liability is on the shoulder of the owner of the offending vehicle in the accident appears to be erroneous in view

of the documents filed by the claimant pertaining to the insurance of the offending vehicle.

12- I, am, of the view that the National Insurance Company, who is the insurer of the vehicle in question, at the time of the accident, is liable to pay the compensation awarded by the Tribunal.

13- The appeal is liable to be partly allowed and the National Insurance Company, i.e. the insurer of the offending vehicle in question is liable to pay the amount of compensation awarded by the tribunal concerned to the claimant/appellant.

14- The argument advanced by the learned counsel for the appellant with regard to the enhancement of the amount of compensation awarded by the claim tribunal is devoid of any force and is liable to be rejected.

15- Accordingly, the appeal is partly allowed. The National Insurance Company is directed to pay the amount of compensation to the claimant/appellant awarded vide impugned judgment and award dated 5-8-2003 within a period of 45 days from the date of this judgment. No order as to costs.

(B.C. Kandpal, J.)

Dated: 18-09-2006
ISB